

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

75-2077

To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
LARRY STANLEY CROSSLEY,

Appellant.

-against-

UNITED STATES OF AMERICA,

Appellee.

-----x
Docket No. 75-2077
B
P/S

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
LARRY STANLEY CROSSLEY
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

MICHAEL YOUNG,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX TO APPELLANT'S BRIEF

Docket entries, Indictment 71 Cr. 697, S.D.N.Y. A

Indictment 71 Cr. 3, N.D.Ill. (71 Cr. 697, S.D.N.Y.) B

Docket entries, Indictment 71 Cr. 441, S.D.N.Y. C

Indictment 71 Cr. 441, S.D.N.Y. D

Appellant's pro se motion for "bill of particulars"
and accompanying papers E

Judge Wyatt's denial of appellant's pro se motion for
"bill of particulars" F

Appellant's pro se motion to obtain documents in forma
pauperis and accompanying affidavit G

Judge Wyatt's denial of appellant's pro se motion to
obtain documents H

Appellant's pro se "Notice of Appeal" I

Judge Wyatt's opinion denying appellant's pro se
"Notice of Appeal" J

Appellant's pro se application to the United States
Court of Appeals for the Second Circuit seeking
leave to appeal in forma pauperis and accompany-
ing papers K

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

(2) JUDGE WYATT

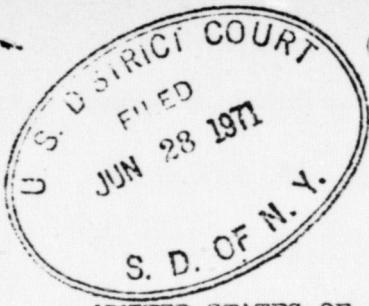
71 CRIM. 697

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		
LARRY STANLEY CROSSLEY		JOHN A. LOWE, AUSA
For Defendant:		

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk				
J.S. 3 mailed ✓	Marshal				
XXXXXXComp. #--R-20	Docket fee				
Title 18					
Sec. 2113(a) & (d) Using revolver to assault & jeopardize life while stealing money from ins. bank.					
ONE COUNT					

DATE	PROCEEDINGS
6-28-71	Filed consent to transfer for plea and sentence under Rule 20 and Indictment(Rec'd from Northern District of Illinois-their number-- 71Cr3).
6-28-71.	Deft. (atty. present) Deft. Pleads Guilty. Pre-sentence report ordered. Sentence adjourned to 8-17-71 at 10:30 A.M. Deft. remanded. WYATT, J.
8-23-71.	Filed Judgment(atty. present) It is adjudged that the defendant is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS to run concurrently with the sentence imposed this day on indictment 71 Cr 441. WYATT, J. Issued commitment and copies.
9-1-71	Def. remanded date 6-28-71.

-Over-



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

71CR 697

JUDGE MAROVITZ

FILED

71CR 3

1971 JAN 5 PM 12 31

UNITED STATES OF AMERICA)
vs.)
LARRY STANLEY CROSSLEY)

No.

Violation: Title 18, United States
Code, Sections 2113(a) and
2113(d) U.S. DISTRICT COURT

JUDGE MAROVITZ

The JANUARY 1971 GRAND JURY charges:

On or about September 29, 1970 at Chicago in the Northern
District of Illinois, Eastern Division,

LARRY STANLEY CROSSLEY

defendant herein, did by force, violence and intimidation, knowingly
and willfully take from the person and presence of Theresa Hicks, an
employee of the Guaranty Bank and Trust Company, Chicago, Illinois,
the deposits of which were then and there insured by the Federal
Deposit Insurance Corporation, a sum of money, approximately \$7,971.00,
which money was then and there in the care, custody, control, manage-
ment and possession of the Guaranty Bank and Trust Company, and in
committing said offense the defendant did assault and put in jeopardy
the life of said Theresa Hicks, an employee of the Guaranty Bank and
Trust Company, by the use of a dangerous weapon, to wit: a revolver;
in violation of Title 18, United States Code, Sections 2113(a) and
2113(d).

A TRUE BILL:

Herman C. Marovitz
FOR MAN

William J. Dwyer
UNITED STATES ATTORNEY

71 CRIM. 4417 JULY 11, 1971
81 LGR 3

FILED

1971 JAN 5 PM '2 31

CLERK
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

THE UNITED STATES OF AMERICA

vs.

Harry Stanley Crossley

INDICTMENT

Title 18, United States Code,
Sections 2113(a) and 2113(d)

A true bill,

John E. Blackstone
FBI
RECORDED

Filed in open court this 5th day
of January, A. D. 1971

H. Stewart Clegg
Deft.
Ours.

Bail, \$50,000.
U. S. DISTRICT COURT
FILED
JUN 28 1971 GPO 902-482

Deft & Atty David Blackstone present. Deft pleads GUILTY. F.S.I. ordered.
Sentence adjourned to August 17 at 10:30 AM. Deft. REMANDED (no bail)

WYATT, J.

Aug. 23, 1971

atty for Govt
Atty for deft. John Lowe

Deft sentenced to 15 yrs to run concurrently with sentence
imposed this day on Indictment 71 CR. 441. Remanded - (S)
atty for deft David Blackstone
atty for Govt David Blackstone
WYATT, J.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

(1)
71 CRIM. 441

JUDGE WYATT

Case No. 100 Rev.

TITLE OF CASE		ATTORNEYS	
THE UNITED STATES	vs.	For U. S.:	
LARRY STANLEY CROSSLEY		JOHN A. LOWE, AUSA	
		For Defendant:	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk				
J.S. 3 mailed ✓	Marshal				
XXXXXX	Docket fee				
Title 18					
Sec. 2113(a) & (d) Robbery of ins. bank by force & violence & by assault & putting in jeopardy by use of pistol.					
ONE COUNT					

DATE	PROCEEDINGS
4-28-71	Filed Indictment.
4-29-71	Pleading adj'd to 5-3-71. BONSAL, J.
5-3-71	Pleads not guilty. Deft. remanded in lieu of bail fixed at \$5,000. Motions ret. in 10 days. MC GOHEY, J.
6-11-71	Filed copy of deft's notice of motion for B/P (WYATT, J.)
6-11-71	Filed CIA Form 2 order appointing counsel, David Blackstone, Esq., 401 B'way, N.Y.C. Phone: 226-6684. (mailed copy to Adm Off Wash D.C.) WYATT, J.
6-11-71	Filed memorandum denying motion of deft. for bill of particulars. So Ordered-Wyatt, J. (notice mailed)
6-21-71	Filed memo-endorsed on motion dated 6-18-71. " A hearing was held on this motion in open court on June 18, 1971. Motion is denied. so ordered. WYATT, J.

DATE	PROCEEDINGS
6-18-71	Deft (atty present) withdraws his plea of not guilty and now PLEADS GUILTY to the Indictment. Pre-sentence investigation ordered, sentence Aug 17, 1971 at 10:30 A.M. Deft remanded, no bail. WYATT, J.
6-21-71	Filed CJA form 4 voucher for compensation (mailed orig.) WYATT, J.
8-23-71	Filed Judgment (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS to run concurrently with the sentence imposed this day on indictment 71 Cr 6. Issued commitment and copies. WYATT, J.
9-1-71	Filed CJA Form 20 voucher for compensation (mailed orig.) WYATT, J.
9-1-71	Filed remand dated 6-18-71.
10-5-71	Filed Transcript of record of proceedings, dated June 18, 28, 1971.
10-21-71	Filed Commitment & entered return, Deft. Delivered to the 9-1-71 U.S. PRISON BARR.
1-20-72	Filed letter dated 12-19-72 from deft. to Judge Wyatt and decision dated 1-20-72 by WYATT, J. * * * is treated as a motion to reduce sentence under Fed. R. Crim P. 35 and is denied, both because it is untimely untimely and because it is without merit. So. Ordered. (Notice mailed.)
2-9-73	Filed deft's. affdvt and notice of motion for a full bill of particulars with memo attached: The motion is denied - So ordered. -- Wyatt, J. (m/n by pro-se clerk)
1-31-75	Filed deft's. affidavit & notice of motion to obtain documents In Forma Pauperis, pursuant to Title 28, U.S.C. Section 1915.
1-31-75	Filed MEMO ENDORSED on deft's. motion filed 1-31-75. This motion is denied for want of any sufficient showing. SO ORDERED.....Wyatt, J. (notice mailed by Pro Se Clerk)

SOUTHERN DISTRICT OF NEW YORK

71 CRIM. 441

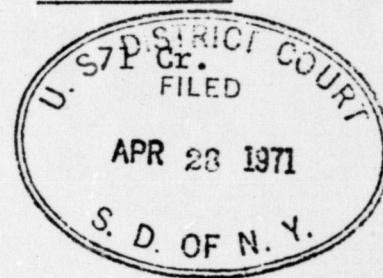
UNITED STATES OF AMERICA

-v-

LARRY STANLEY CROSSLEY,

Defendant

INDICTMENT



The Grand Jury charges:

On or about the 11th day of January, 1971, in the Southern District of New York, LARRY STANLEY CROSSLEY, the defendant, unlawfully, wilfully and knowingly, by force and violence and by intimidation did take and attempt to take from the person and presence of certain tellers of the Yorkville Savings and Loan Association, 1640 Second Avenue, New York, New York, a sum of money belonging to and in the care, custody, control, management and possession of said savings and loan association, the deposits of which savings and loan association were then insured by the Federal Savings and Loan Insurance Corporation; and, that in committing and attempting to commit the offense charged the defendant did assault and put in jeopardy the life of certain persons, to wit, the employees and customers of said savings and loan association, by the use of a dangerous weapon, to wit, a pistol.

(Title 18, United States Code, Section 2113 (a)

and (d))

Betty J. Campbell
Foreman

Whitney North Seymour Jr.
WHITNEY NORTH SEYMOUR, JR.

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

LARRY STANLEY CROSSLEY,

Defendant

MAY 3 - 1971

DEFT. REMANDED TO CIEU OF DATE FIXED IN

Probation set in 10 days.

Boenig, Jr.

INDICTMENT

In violation of Title 18
United States Code, Section
2113 (a) and (d)).

WHITNEY NORTH SEYMOUR, JR.

United States Attorney.

A TRUE BILL.

Low, A. U.S.A.
MAY 18 1971

J. J. J.

DeF.

Deft and attorney have Blackstone present. Deft
waives his right to a trial by jury and now
pleads Guilty to the indictment. P.D.L.
Ordered, sentence Aug. 17, 1971 at 10:30 AM.
Deft. Remanded, no bail. *By Wright.*

AUG 23 1971 (Blackstone, Esq.)

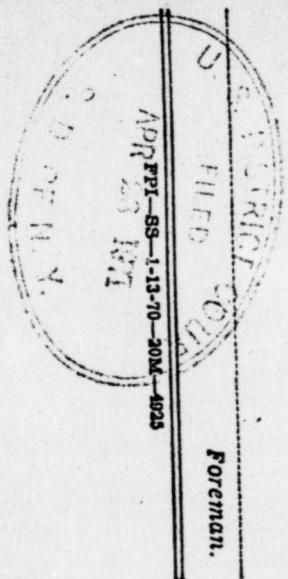
Deft sentenced to 15 yrs on ct. 1 of Indictment

#1 CR. 441 at a place of confinement to be designated by the

Atty. General. Deft also sentenced to 15 yrs on ct. 2 on

Indictment #1 CR. 697 from the Northern Dist. Court Illinois

to run concurrently with ct. 1 on Indictment #1 CR. 441.



Foreman.

APR 23 1971

100-1370-2046-4023

Rutherford

IN THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

FOLEY SQUARE, NEW YORK, N.Y.

LARRY S. CROSSLEY
DEFENDANT
}
-vs.-
}
UNITED STATES OF AMERICA
PLAINTIFF
}
}

RE: 71-447 & 71-697

FEB 9

1973

TO: THE HONORABLE INZER B. WYATT, JUDGE
UNITED STATES DISTRICT COURT

MOTION FOR FULL BILL OF PARTICULARS IN
THE ABOVE NUMBERED CAUSE

Comes now, LARRY S. CROSSLEY hereinafter known as the Petitioner, in the above styled cause of action to compel the United States Government to issue a Full Bill of Particulars in the matter United States v. LARRY S. CROSSLEY. That this Full Bill shall include a copy of the arrest warrant, the indictment, the transcript of arraignment, the ~~transcript of the trial~~, the transcript of plea, and the transcript of sentence. That this Full Bill shall include the affidavits of the witnesses who testified in this matter or before this Court.

Dated: 2/7/73

S/ Larry S. Crossley

LARRY S. CROSSLEY

Defendant's Name
Petitioner Pro-se

(1)

MOTION FULL BILL OF PARTICULARS/PAGE 2

MEMORANDUM IN SUPPORT OF BRIEF

LARRY S. CROSSLEY

Now comes, _____, hereinafter known as the Petitioner in the above styled cause of action, and prays this Honorable Court to grant him the copies of the before mentioned documents. Petitioner honestly and truely believes he has just cause in seeking these and does not intend to waste the valuable time of the Court by engaging in a fishing expedition.

S/
Larry S. Crossley
LARRY S. CROSSLEY

AFFIDAVIT IN FORMA PAUPERIS

Petitioner states that he is, at present, incarcerated in the Federal Penitentiary at Terre Haute, Indiana, under pain of sentence.

Further, that he is unable to pay the fees of the filing of the foregoing Motion. He is indigent and has no property stocks, bonds, nor United States currency.

Therefore, Petitioner prays this Honorable Court to grant him leave to proceed in forma pauperis, guaranteed by the 14th Amendment to the United States Constitution.

S/Larry S. Crossley
LARRY S. CROSSLEY
Defendant's name
Affiant

SUBSCRIBED and SWORN to before me this 7th day of February
1973

(Authorized Agent under Title 18
Section 4004.

Raymond A. George
United States Parole Officer

(3)

AFIDAVIT PROOF OF SERVICE

STATE OF INDIANA)
COUNTY OF VIGO)
)
)
)

I, LARRY S. CROSSLEY in the above listed and styl-
ed cause of action, do hereby swear that on the below list-
ed date, a true copy was delivered to the authorized agent
by the United States Mail from the United States Penitent-
iary, Terre Haute, Indiana, 47808.

- 1.) The Honorable INZER B. WYATT,
United States District Court Judge
For the SOUTHERN District of NEW YORK, N.Y.
located at FOLEY SQUARE
(2 copies)
- 2.) Clerk of the Court for the aforementioned
jurisdiction. (1copy)
- 3.) One copy to the United States Attorney of the
aforementioned jurisdiction.
- 4.) One copy to the United States Attorney-General,
Mr. Richard Kleindenst, Department of Justice,
Washington, D.C. 20510.
- 5.) One Copy to the SECOND Circuit Court of Appeals,
located at NEW YORK, N.Y., Mr. Justice
MARSHALL presiding.
- 6.) One copy retained by petitioner.

Respectfully Submitted,

Larry S. Crossley
LARRY S. CROSSLEY
Defendant's Name
Petitioner Pro-se

SUBSCRIBED and SWORN to before me this 7th day of February
1973.

Ray L. Hengg, pro se

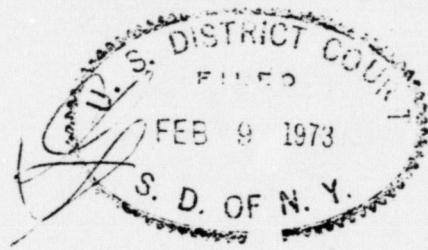
AUTHORIZED AGENT UNDER PROVISIONS OF SECTION 4004 OF TITLE
18. U.S.C.A.

UNITED STATES OF AMERICA
-v-
LARRY STANLEY CROSSLEY

71 Cr. 441

71 Cr. 697 ✓

file in



This is a motion by defendant Crossley pro se and by mail for a "full bill of particulars".

Crossley pleaded guilty to bank robbery (18 U.S.C. § 2113(a) and 2113(d)) and on August 23, 1971, was sentenced to imprisonment.

Under the existent situation a motion for a bill of particulars, which is directed to the indictment and before trial, is frivolous.

The motion is denied.

SO ORDERED.

Dated: February 9, 1973

Inzer B. Wyatt
INZER B. WYATT
United States District Judge

C O P Y

In The
United States District Court
For The
Southern District of New York

Larry Stanley Crossley,
Petitioner
vs
United States of America,
Respondent.

Civil Action

Motion to Obtain Documents
In Forma Pauperis, Pursuant
To Title 28, U.S.C. Section
1915

Comes now, the Petitioner Larry Stanley Crossley, and moves this Honorable Court under the provisions of Title 28 U.S.C. section 1915 to issue the order for said Petitioner to receive transcripts of his arraignment, and sentencing proceedings, in case number 71 Cr. 697, 71 Cr. 441 (IBW), for the reasons so stated in the attached brief.

Wherefore and Premises considered, your Petitioner in good faith prays this honorable court will grant this motion herein.

Respectfully submitted,

/s/ LARRY S. CROSSLEY
Petitioner Pro-Se

Copy mailed to U.S. Atty
EMC
Pro Se Clerk
1/31/75

C O P Y

In The
United States District Court
For The
Southern District of New York

Larry Stanley Crossley,

Petitioner,

vs

Civil Action

United States of America,

Respondent.

Affidavit in support of
Motion to obtain documents

5
Comes now the petitioner Larry Stanley Crossley, Being
duly sworn and states:

1. He is in the custody of the Attorney General of the U.S. at the U.S. Penitentiary, Terre Haute, Indiana.
2. The Petitioner Is serving two (2) fifteen (15) year concurrent sentences imposed by this Court August 21, 1971.
3. The Respondents The United States of America are in violation of Petitioners fifth Amendment Constitutional rights inasmuch as Petitioner was deprived of Due Process Of The Law in both cases.
4. The Petitioner is attempting to file motions into this court Pursuant to Title 28 U.S.C. section 2255, and Petitioner requests the said documents to properly present his contentions.
5. The Petitioner has no funds in which to pay for the documents requested, nor has the Petitioner stock, realestate, or property That he can submit to this court for security in

C O P Y

order to obtain the requested documents

6. The Petitioner Believes he has a right of action,
and feels he is entitled to redress to obtain the requested
documents.

Respectfully submitted,

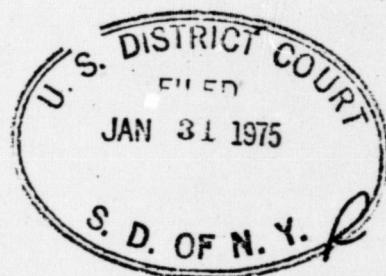
/s/ LARRY S. CROSSLEY
Petitioner Pro-Se

Subscribed & Sworn To
28th day of Jan. 1975

/s/ S.A.ZANGS, U.S. Parole Officer

Authorized by the Act of July 7, 1955
to administer oaths (U.S.C. 4004).

In The
United States District Court
For The
Southern District of New York

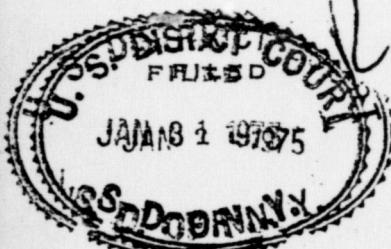


MEMO ENDORSED

Larry Stanley Crossley,
Petitioner

United States of America,
Respondents

(83)



This motion is denied for want of cause and is denied insofar as it is based upon the facts set forth in the attached brief. (IBW)
Jan 31, 1975

210-441
71-2697
File
IBW
S.D.
US
1975
31 1975

On this date, the Petitioner Larry Stanley Crossley and before this Honorable Court under the provisions of Title 28 U.S.C., Section 2071 of the Code of Civil Procedure, Petitioner is adverse to the Respondents, and the following proceedings, of case number 71-2697, are all demands so stated in the attached brief. (IBW)

Names and addresses confidential, your Petitioner in due course of this judicial court will grant disclosure to both.

Respectfully submitted

Larry S. Crossley
71-2697-2

Copy marked to
U.S. Atty
1-31-75 *Eric*
Post Clerk

FEB 3 1975
MICROFILM

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

LARRY CROSSLEY,
PETITIONER

v.

UNITED STATES OF AMERICA,
RESPONDENT

NOTICE OF APPEAL

Notice is hereby given that the Petitioner Larry Crossley, appeals the order entered against him, in his Motion To obtain transcripts filed January 31, 1975 and denied January 31, 1975, to the UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Petitioner further moves the court to make and enter its order for transmission of portions of the record necessary for the proper review of the case.

Further Petitioner moves this Court to make and enter its order allowing Petitioner to proceed as an indigent person in processing his appeal.

Respectfully submitted

666 Long Market Crossley
Petitioner Pro-Se
P.O. Box 33
Terre Haute, Indiana

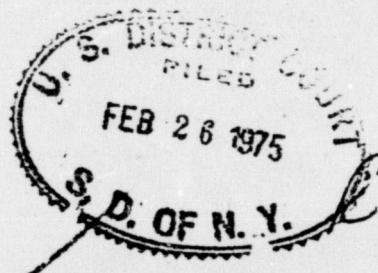
Subscribed and sworn to
before me this 14 day
of February 1975

Barb. George
Parole Officer

Notary Public, State of Indiana
A. Schmitz, Clerk (S. U. S. C. 1962)

UNITED STATES OF AMERICA
-v-
LARRY STANLEY CROSSLEY,
Defendant.

71 Cr. 697



This is Petitioner Larry Crossley's (petitioner) "Notice of Appeal", sworn to February 14, 1975, which is treated as a motion for leave to proceed on appeal in forma pauperis. Fed. R. App. P. 24(a). The appeal is from a denial by endorsement filed January 31, 1975, of petitioner's "Motion to Obtain Documents in Forma Pauperis", sworn to January 28, 1975. The "Notice of Appeal" has no affidavit as required by Rule 24(a) to show petitioner's inability to pay, his belief that he is entitled to relief, and the issues presented on appeal; he did attach to his motion to obtain documents an affidavit stating his inability to pay for the documents requested in that motion.

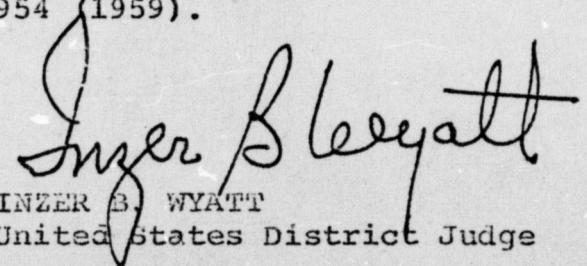
Petitioner pleaded guilty to this indictment charging bank robbery and the use therein of a dangerous weapon (18 U.S.C. §§ 2113(a) and (d)) and on August 23, 1971, was sentenced to a term of 15 years, to run concurrently with a sentence imposed on the same day under another indictment (71 Cr. 441).

In his motion to obtain documents, petitioner sought to "receive transcripts of his arraignment, and the sentencing proceedings", apparently so that he could use them to prepare a motion under the federal habeas corpus statute, 28 U.S.C. § 2255. Petitioner has not yet made a motion under 28 U.S.C. § 2255, has made no factual averments to suggest that he might be entitled to relief under that section, and therefore presented no ground for granting his request for transcripts.

Therefore, petitioner's motion for leave to proceed on appeal in forma pauperis is denied. Since petitioner's motion to obtain documents was made under 28 U.S.C. § 1915, it is certified that an appeal from the order denying that motion is not taken in good faith. In this context good faith is judged by an objective standard and if an appeal is frivolous it is not taken in good faith. Coppedge v. United States, 369 U.S. 438, 445 (1962); United States v. Visconti, 261 F.2d 215, 218 (2d Cir. 1958); cert. denied, 359 U.S. 954 (1959).

SO ORDERED.

Dated: February 25, 1975


INZER B. WYATT
United States District Judge

MICROFILM
FEB 26 1975

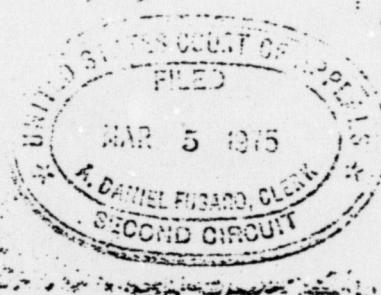
IN THE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

LARRY STANLEY CROSSLEY,
PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE



MOTION FOR LEAVE TO PROCEED ON APPEAL
IN FORA PAUPERIS

Comes now the Appellant, Larry Stanley Crossley, and moves the Court under the provisions of title 28 U.S.C. 1915, rule 24 F.R.A.P., to take and enter its order allowing him to file an appeal, as an indigent person for the reasons so stated in the attached affidavit.

Wherefore the Appellant being without sufficient funds to pay for such appeal prays this Court will grant leave so to proceed herein.

respectfully submitted

Larry Stanley Crossley
LARRY STANLEY CROSSLEY
72560-158G
P.O. BOX 33
TERRE HAUTE, INDIANA
47303

A COPY HEREOF WAS MAILED THIS DAY
OF MARCH 1975 to PAUL J. CURRAN, U.S.
ATTORNEY SOUTHERN DISTRICT OF NEW YORK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

LARRY STANLEY CROASLEY,
PETITIONER-APPELLANT }
v. }
UNITED STATES OF AMERICA,
RECOGNIZANT-APPELLEE }
} ID.

AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED ON APPEAL
IN FORMA PAUPERIS

Comes now the appellant, Larry Stanley Croasley, being duly sworn and states
for this affidavit:

- 1.) He has no property, real estate, bank account, nor resources of any kind
in which can be paid to process the appeal, or give security therefor.
- 2.) Appellant believes he has a right of action in his appeal to this Court
, in that the District Court failed to give the Motion to Obtain Documents
and attached Affidavit that was filed by Appellant full consideration.
- 3.) Attached hereto is a copy of the Motion, Affidavit, and opinions rendered
against Appellant, in the United States District court, Southern District
of New York, by the honorable Inner B. Wyatt, United States District Judge.

Respectfully Submitted

Larry Stanley Wossley
LARRY STANLEY WOSSLEY
PETITIONER-APPELLANT
PRO-SE 72560-1583
P.O.BOX 33
TERRE HAUTE, INDIANA
47803

Subscribed and sworn before me this
7 day of March 1975

R. L. Tracy
Postle Officer

10.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LAWYER STANLEY GROSSLEY
PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA
RESPONDENT-APPELLEE

ATTAL FILE NO. 100-30000-10
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KENTUCKY

UNITED STATES THE APPELLEE

LAWYER STANLEY GROSSLEY.
PETITIONER-APPELLANT
P.O. # 72300-1580
P.O. BOX 33
TOMAH LAKE, INDIANA
47003

March 3, 1975

SUBJECT INDEX

	page
List of authorities	ii
Elements of the case	1
Issues presented	"2
Conclusion	4

<u>LIST OF APPENDIXES</u>	PAGE
Alfonso v. United States, 305 F.Supp. 568 (1969) -----	3
Alvarez v. United States, 413 F.2d 957, 960 (1969) -----	3
Bullock v. Bennett, 365 U.S. 703, 709, (1961) -----	3
United States v. Hanley, 369 F.Supp 173 (1972) -----	3
Title 28, U.S.C. 2255 -----	2
Title 28, U.S.C. 2250 -----	2
Title 28, U.S.C. 1915 -----	2,2,3
Title 18, U.S.C.2113 -----	1
2 Federal Rules of Appellate Procedures, Rule 28 (a)(2), 28 U.S.C.. -----	2
2 Federal Rules of Appellate Procedures, Rule 4 28 U.S.C.-----	2
	3

10.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LARRY STANLEY GROSSLEY,
PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

On January 23, 1975 Appellant mailed a motion and affidavit to the United States District Court, Southern District of New York, pursuant to 28 U.S.C. 1915, requesting copys of transcripts of his arraignment and sentencing proceedings of case No. 71 CR697, 71 CR 141, in which cases Appellant entered a plea of guilty to a violation of title 21, U.S.C. 2113 (a) (d) namely armed bank robbery, and was sentenced thereafter to the custody of the attorney general for two (2) fifteen (15) years terms of imprisonment, said sentences were imposed concurrently. In the aforementioned motion and affidavit, Appellant contended a violation of Due Process, and his need of the above recorded to properly present his contentions to the district Court.

to be late to Appellants knowledge his action and affidavit was never docketed.

On January 31, 1975 the District Court entered its order denying Appellants motion, said denial was for want of any sufficient showing. The Appellant on February 14, 1975 filed timely notice of appeal as required by (Rule 4 F.R.A.P.), under the assumption that leave to proceed as a pauper had been granted in his original motion to the District Court see (Rule 24 a-2 F.R.A.P.).

The District Court on February 25, 1975 entered an order denying Appellant leave to appeal as a pauper, holding Appellants appeal was not in good faith, Appellant now appeals both orders to this Court.

FACTS RELEVANT

Before examining on a general inquiry into Appellants contentions of error it is necessary to state Appellant had no other means available to obtain the requested transcripts, but through 28 U.S.C., 1915.

Had Appellant collaterally attacked his sentence imposed under 28 U.S.C. 2255, Appellant could have requested and maybe received transcription of the requested proceedings under the provisions of 28 U.S.C., 753 or 2230.

Notwithstanding that there was no other provision in the statutory scheme other than 28 U.S.C., 1915 that Appellant could have utilized, Appellant attempted in the District Court to carry the burden of showing the court that 28 U.S.C., 1915 requires, (his inability to pay the cost of the relief requested), (his belief that he is entitled to redress), and (his good faith).

The District Court entered its order denying Appellants requested for want of any sufficient showing.

In the affidavit attached to Appellants motion in the District Court, Appellant alleged a violation of due process.

This alone in itself was not sufficient to state a claim in which relief could be granted, but Appellant made the contention under the assumption that 28 U.S.C., 1915 was not for the purpose of collateral attack.

The basis of Appellant's contention was that the District Court applied the "carrot and stick theory" to his sentencing proceedings, in that Appellant's sentencing proceedings were continued without cause until Appellant testified before the Grand Jury, at which Appellant exercised his right against self-incrimination.

Appellant intends to prove from the record, from remarks of his appointed attorney, and the government, the involuntariness of his guilty plea.

In *Smith v. DeLoach*, 365 U.S. 700, 709 41 F.R.D. 405 396, 6 L.R.R.M. 2d 32, the Supreme Court held:

"The Courts must not interpose any financial considerations between an indigent and his right to sue for his liberty".

On the other hand in *Slawek v. United States* 113 F.2d 957, 960 (5th Cir. 1940) the court held that:

"A rich defendant may have the right to waste his money on unnecessary and needless trial steps, but that does not, in the name of necessary constitutional equality, give the indigent the right to squander government funds merely for the asking."

Even though the basis of appellants due process contention is novel, if proven, Appellant would be entitled to relief.

Appellant has carried his burden of showing his need see *Alfinito v. United States*, 305 F.Supp. 508, Yet the District Court failed to make findings that Appellant's request was not in good faith see *United States v. Bailey*, 307 F.Supp. 173 (1972).

The District Court has taken the position that it will not even consider the affidavit attached to Appellant's motion see (order entered by the District Court February 24, 1974 mm 1).

ORIGINATOR

WHEREAS AND PREMISES CONSIDERED, Appellant respectfully request that this Court reverse the orders of the District Court, and remand this case back to the District Court with instructions for further proceedings.

REPRODUCTION SUBMITTED

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I certify that a duplicate copy of the foregoing
brief for Appellant was mailed to The United States
Attorneys office Southern District of New York
on this 7 day of March, 1975.

Larry Stanley Crossley
Larry Stanley Crossley

Subscribed and sworn before me this

7 day of March 1975

B. H. Deacon
B. H. Deacon
Parole Officer

Certificate of Service

Aug 19, 1975

I certify that a copy of this brief and appendix has
been mailed to the United States Attorney for the Southern
District of New York.

